

AMENDED IN SENATE AUGUST 7, 2000

AMENDED IN SENATE JULY 15, 1999

AMENDED IN ASSEMBLY APRIL 5, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1628**

**Introduced by Assembly Member Kaloogian**

February 26, 1999

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An act to amend Sections ~~1826, 1851, and 2356.5~~ 16061.7 and 16061.8 of the Probate Code, relating to ~~conservatorships~~ trusts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1628, as amended, Kaloogian. ~~Conservatorships~~ Trusts.

*Existing law requires a trustee to serve a notification upon specified persons when a revocable trust becomes irrevocable, as specified, or when there is a change of trustee of an irrevocable trust, informing the recipient of specified information and that he or she is entitled to receive a true and complete copy of the terms of the trust upon request. Existing law provides that no person receiving this notification by a trustee may bring an action to contest the trust more than (1) 120 days from the date the notification by the trustee is served upon him or her, or (2) 60 days from the day on which a copy of the terms of the trust is mailed or personally delivered to him or her in response to his or her request during that 120-day period.*

AB 460 (Ch. 34, Stats. 2000), among other things, proposes to make various changes in the requirements for notification, including revision of (2) above, to provide that an action may not be brought more than 60 days from the day on which a copy of the terms of the trust is mailed or personally delivered. It also would make a related change with respect to a warning required to be included in the notice in certain circumstances.

This bill would incorporate all of the changes proposed to be made by AB 460 with respect to notification other than the deletion of the reference to the 120-day period.

~~(1) Existing law provides for the establishment and regulation of conservatorships. Existing law specifies the duties of a court investigator with respect to the establishment and review of the conservatorship.~~

~~This bill would require the court investigator to review the allegations of a petition regarding the reasons why the powers that would be established pursuant to the provisions of this bill described in (2) below are required and determine whether the conservatee objects to the powers, and if the powers are established. It would also require the court investigator, when court review of a conservatorship is required, to inform the conservatee of the right to object to the powers and determine whether the conservatee wishes to petition the court to modify or revoke the powers.~~

~~(2) Existing law authorizes, upon a court's findings that a conservatee has dementia and a functional impairment, a conservator to place the conservatee in a prescribed secured facility and authorize the administration of prescribed medication. Existing law requires a court investigator to include a determination in a specified report as to whether these powers granted to the conservator are warranted. Existing law requires the court investigator to advise the conservatee of his or her right to object to the conservator's powers under these provisions.~~

~~This bill would revise and recast these provisions. The bill would authorize a conservator to place a conservatee in a restricted placement, as defined, for the care and treatment of dementia, rather than a secured facility, upon specified findings by a court. The bill would also authorize a conservator to authorize the administration of psychotropic medications~~

~~for the care and treatment of dementia only upon specified findings by a court. The bill would set forth definitions for purposes of these provisions, specify procedures for obtaining this authority, and revise the duties of the court investigator. The bill would limit the authority of conservatorships established prior to January 1, 1998, only when those conservatorships become subject to review, as specified.~~

~~(3) By providing that the appearance of an attorney at the time of a hearing on the powers of a conservatee is by declaration under penalty of perjury, thus expanding the crime of perjury, the bill would create a state-mandated local program.~~

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes-no. State-mandated local program: yes-no.~~

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 1826 of the Probate Code is~~  
2     ~~SECTION 1. Section 16061.7 of the Probate Code is~~  
3     ~~amended to read:~~  
4     ~~16061.7. (a) A trustee shall serve a notification by the~~  
5     ~~trustee as described in this section in either of the~~  
6     ~~following events:~~  
7     ~~(1) When a revocable trust or any portion thereof~~  
8     ~~becomes irrevocable because of the death of one or more~~  
9     ~~of the settlors of the trust or for any other reason, or~~  
10    ~~because, by the express terms of the trust, the trust~~  
11    ~~becomes irrevocable within one year of the death of a~~  
12    ~~settlor because of a contingency related to the death of~~  
13    ~~one or more of the settlors of the trust.~~  
14    ~~(2) When Whenever there is a change of trustee of an~~  
15    ~~irrevocable trust. The duty to serve the notification by~~  
16    ~~the trustee is the duty of the continuing or successor~~  
17    ~~trustee, and any one cotrustee may serve the notification.~~

(b) The notification by *the* trustee required by subdivision (a) shall be served on each of the following:

(1) Each beneficiary of the irrevocable trust or irrevocable portion of the trust, subject to the limitations of Section 15804.

(2) ~~If—Each heir of the deceased settlor, if the event that requires—trustee notification is the death of a settlor; to each heir of the deceased or irrevocability within one year of the death of the settlor of the trust by the express terms of the trust because of a contingency related to the death of a settlor.~~

(3) If the trust is a charitable trust subject to the supervision of the Attorney General, to the Attorney General.

(c) A trustee shall, for purposes of this section, rely upon any final judicial determination of heirship, known to the trustee, but the trustee shall have discretion to make a good faith determination by any reasonable means of the heirs of a deceased settlor in the absence of a final judicial determination of heirship known to the trustee.

(d) The trustee need not provide a copy of the notification by trustee to any beneficiary or heir—~~the existence of whom is—~~(A) (1) known to the trustee but who cannot be located by the trustee after reasonable diligence; or ~~(B) (2) unknown to the trustee.~~

~~(d)~~

(e) The notification by trustee shall be served by mail to the last known address, pursuant to Section 1215, or by personal delivery.

~~(e)~~

(f) The notification by trustee shall be served not later than 60 days following the occurrence of the event requiring service of the notification by trustee, or 60 days ~~following after the trustee's becoming~~ *trustee became* aware of the existence of a person entitled to receive notification by trustee, if that person was not known to the trustee on the occurrence of the event requiring service of the notification ~~by trustee~~. If there is a vacancy in the office of the trustee on the date of the occurrence

1 of the event requiring service of the notification by  
2 trustee, or if that event causes a vacancy, then the 60-day  
3 period for service of the notification by trustee  
4 commences on the date the new trustee commences to  
5 serve as trustee.

6 ~~(f)~~

7 (g) The notification by trustee shall contain the  
8 following information:

9 (1) The identity of the settlor or settlors of the trust  
10 and the date of execution of the trust instrument.

11 (2) The name, mailing address and telephone number  
12 of each trustee of the trust.

13 (3) The address of the physical location where the  
14 principal place of administration of the trust is located,  
15 pursuant to Section 17002.

16 (4) Any additional information that may be *expressly*  
17 required by the terms of the trust instrument.

18 (5) A notification that the recipient is entitled, upon  
19 reasonable request to the trustee, to receive from the  
20 trustee a true and complete copy of the terms of the trust.

21 ~~(g) Unless~~

22 ~~(h) If the notification by trustee is served only because~~  
23 ~~of a change of the trustee the trustee is served because a~~  
24 ~~revocable trust or any portion of it has become~~  
25 ~~irrevocable because of the death of one or more settlors~~  
26 ~~of the trust, or because, by the express terms of the trust,~~  
27 ~~the trust becomes irrevocable within one year of the~~  
28 ~~death of a settlor because of a contingency related to the~~  
29 ~~death of one or more of the settlors of the trust, the~~  
30 notification by the trustee shall also include a warning, set  
31 out in a separate paragraph in not less than 10-point  
32 ~~boldface~~ *boldface* type, or a reasonable equivalent  
33 thereof, that states as follows:

34 “You may not bring an action to contest the trust more  
35 than 120 days from the date this notification by the trustee  
36 is served upon you or 60 days from the ~~day~~ *date* on which  
37 a copy of the terms of the trust is mailed or personally  
38 delivered to you ~~in response to your request~~ during that  
39 120-day period, whichever is later.”

1 ~~(h) A trustee who fails to serve the notification by~~  
2 ~~trustee as required by this section shall be responsible for~~  
3 ~~all damages, including attorney's fees and costs, caused by~~  
4 ~~the failure unless the trustee makes a good faith effort to~~  
5 ~~comply with this section. A trustee shall, for purposes of~~  
6 ~~this section, rely upon any final judicial determination of~~  
7 ~~heirship; but the trustee shall have discretion to make a~~  
8 ~~good faith determination by any reasonable means of the~~  
9 ~~heirs of a deceased settlor in the absence of a final judicial~~  
10 ~~determination of heirship known to the trustee.~~

11 (i) Any waiver by a settlor of the requirement of  
12 serving the notification by trustee required by this section  
13 is against public policy and shall be void.

14 (j) A trustee may serve a notification by trustee in the  
15 form required by this section on any person in addition to  
16 those on whom the notification by trustee is required to  
17 be served. A trustee is not liable to any person for serving  
18 or for not serving the notice on any person in addition to  
19 those on whom the notice is required to be served. A  
20 trustee is not required to serve a notification by trustee  
21 if the event that otherwise requires service of the  
22 notification by trustee occurs before January 1, 1998.

23 *SEC. 2. Section 16061.8 of the Probate Code is*  
24 *amended to read:*

25 16061.8. No person—~~who receives~~ *upon whom the*  
26 *notification by the trustee is served* pursuant to this  
27 chapter may bring an action to contest the trust more  
28 than 120 days from the date the notification by the trustee  
29 is served upon him or her, or 60 days from the day on  
30 which a copy of the terms of the trust is mailed or  
31 personally delivered to him or her ~~in response to his or~~  
32 ~~her request~~ during that 120-day period, whichever is  
33 later.

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**All matter omitted in this version of the  
bill appears in the bill as amended in the  
Senate, July 15, 1999 (JR 11)**

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